# STATE OF MICHIGAN

# COURT OF APPEALS

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| PEOPLE OF THE STATE OF MICHIGAN,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>September 27, 2011 |
| v | No. 299157<br>Saginaw Circuit Court |
| ROBERT EDWARD-ANTON LANDIN,<br><br>Defendant-Appellant. | LC No. 09-033104-FC |

Before: SHAPIRO, P.J., and WILDER and MURRAY, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of assault with intent to do great bodily harm less than murder, MCL 750.84,[1] and carrying a dangerous weapon with unlawful intent, MCL 750.226. The trial court sentenced defendant as a second habitual offender, MCL 769.10, to prison terms of 60 to 180 months for the former conviction and 30 to 90 months for the latter. We affirm.

An ongoing feud between defendant and his neighbor, Deandre Minniefield, underlay the case before us. The relevant events began on Friday, July 31, 2009, when Joseph Landin, defendant's cousin, and Minniefield became involved in a brawl at defendant's house where defendant's cousin also lived. Precipitating the fight was Joseph Landin's expression of displeasure to Minniefield's daughter because her dog had defecated in his yard earlier that day. The fight between Minniefield and Joseph Landin ended only after a neighbor later intervened.

Defendant was at work during the fight, but upon learning of the dispute later that day, went to Minniefield's home. According to Minniefield, defendant approached him in his yard around 10:30 p.m. and Minniefield yelled to defendant to get off of his property. After appearing to Minniefield that he was leaving, defendant turned and stabbed Minniefield in the abdomen. Minniefield claimed that upon realizing he had been stabbed, he pulled a gun out of his pocket and fired two shots at defendant, who fled into the street and swore at Minniefield, taunting that he had stabbed him.

[1] This is the lesser offense of the original charge of assault with intent to murder, MCL 750.83.

In contrast, defendant testified that when he arrived at Minniefield's house, Minniefield approached him and drew a gun. Defendant claimed he then struggled with Minniefield to defend himself until Sharon Green, Minniefield's girlfriend, threw a knife. The blunt end of the knife struck defendant in the back. Defendant asserted that he then grabbed the knife from the ground and stabbed Minniefield before fleeing the scene as Minniefield fired five or six shots. Shortly thereafter, defendant called 911 to report a shooting, but did not talk again to police until the following Monday when he voluntarily arrived at the police station after retaining counsel. Defendant was subsequently arrested, and after his jury trial, convicted of the aforementioned offenses. Notably, the interviewing officer testified at trial that defendant's rendition of events during his police interview – which was nearly identical to his testimony noted above – was "very inconsistent" with other eyewitness reports of the shooting.

## II. ANALYSIS

On appeal, defendant first argues that the officer in charge of the case offered inadmissible testimony concerning the veracity of defendant and other witnesses to the shooting, and additionally improperly commented on the effect of defense counsel's presence during defendant's police interview. Although defendant moved for a mistrial below with respect to the officer's testimony about defendant's veracity, he concedes that he failed to lodge a contemporaneous objection as is necessary to properly preserve this issue for appeal. *People v Grant*, 445 Mich 535, 545-546, 553; 520 NW2d 123 (1994). Therefore, our review is for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

With respect to witness credibility, defendant cites as error the statements of the officer in charge that he "could tell that [defendant] was lying to me just based on the evidence." Additionally, defendant asserts that it was improper for the officer to testify that defendant's statements were "inconsistent" with other witnesses whom the officer concluded were "truthful" based on the consistency of details in their versions of events. Generally, it is improper for the prosecutor to ask a witness to comment or opine on the credibility of another witness because credibility is for the jury to determine. *People v Dobek*, 274 Mich App 58, 71; 732 NW2d 546 (2007). This, however, is not what occurred here as the officer was not improperly commenting on defendant's credibility but was testifying about his conclusions made during his interrogation, and how the physical evidence compared to the witnesses and defendant's statements. Admission of this unobjected to, unresponsive answer did not arise to a plain error affecting defendant's substantive rights.

In a similar vein, although the officer indentified several witnesses with whom he spoke during his investigation,[2] the officer provided only cursory treatment of his interviews with those specific witnesses – relating only that he spoke with them "to develop a suspect." The officer never specifically identified the "other people" whom he found "truthful,"[3] and he made no

[2] These witnesses included Joseph Landin, Mary Perez, and Andrew Leung.

[3] The officer apparently based his conclusion that other eyewitnesses were truthful due to their consistent reports concerning "the number of shots, [and] where the movement took place."

comment with respect to the veracity of the testimony provided by any witness at trial. Therefore, the officer did not improperly comment on another witness's credibility. But even if the officer's comment regarding the truthfulness of other witnesses were improper, we note that that it was Minniefield and defendant's testimony that supplied the relevant – albeit conflicting – details of the altercation between them, rather than the unnamed eyewitnesses whom the officer found "truthful." Therefore, we cannot conclude that the challenged remarks were outcome determinative, and defendant's argument must fail.

Defendant also contends that the officer's testimony about the effect of defense counsel's presence during the officer's interview with defendant was irrelevant, and therefore improper. Although we agree with defendant that the effect of defense counsel's presence at the interview had no bearing on any fact of consequence, *People v Flick*, 487 Mich 1, 25 n 2; 790 NW2d 295 (2010) (under MRE 401 relevant evidence means "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence"), we fail to see – and defendant offers no explanation to show – how this testimony resulted in prejudice. Indeed, the crux of the officer's testimony on this point amounted to nothing more than his admission that he did not challenge defendant's rendition of events during his interview. Reversal is not warranted.

Next, defendant argues that he was denied his constitutional right to present a defense when the court excluded evidence of Minniefield's prior violent acts with witness Arthur Flinnon, as well as evidence of a statement overheard by Joseph Landin that Minniefield was leaving to get a gun during their altercation. To the extent that defendant's argument on appeal rests on the ground asserted below, this issue is preserved.[4] *People v Aldrich*, 246 Mich App 101, 113; 631 NW2d 67 (2001). To the extent this issue is preserved, this Court reviews the trial court's decision to admit or exclude evidence for an abuse of discretion, but reviews de novo whether a defendant was denied his right to present a defense. *People v Steele*, 283 Mich App 472, 478; 769 NW2d 256 (2009); see also, *People v Kurr*, 253 Mich App 317, 327; 654 NW2d 651 (2002). Otherwise, our review is for plain error affecting substantial rights. *Carines*, 460 Mich at 763.

"A criminal defendant has a right to present a defense under our state and federal constitutions." *People v Anstey*, 476 Mich 436, 460; 719 NW2d 579 (2006), citing US Const, Ams VI, XIV; Const 1963, art 1, §§ 13, 17, 20. "However, an accused's right to present evidence in his defense is not absolute." *People v Unger*, 278 Mich App 210, 250; 749 NW2d 272 (2008). "A defendant's interest in presenting . . . evidence may thus bow to accommodate other legitimate interests in the criminal trial process[,]" such as the implementation of evidentiary rules. *Id*. (quotation marks and citation omitted). "Such rules do not abridge an accused's right to present a defense so long as they are not 'arbitrary' or 'disproportionate to the

[4] The only ground asserted below that defendant raises on appeal is that Minniefield's interaction with Flinnon was necessary to establish Minniefield's "propensity to take things into his own hands."

purposes they are designed to serve.'" *Id*., citing *United States v Scheffer*, 523 US 303, 308; 118 S Ct 1261; 140 L Ed 2d 413 (1998).

Initially, defendant claims that the trial court improperly excluded evidence of Minniefield's prior conflicts with Flinnon because (1) whether Minniefield was a violent man was a relevant fact, and (2) evidence of his violence with Flinnon would establish a reason for his allegedly false testimony against defendant. As for the former justification, MRE 404(b) expressly bars the admission of prior bad acts offered to prove the character of a person to show action in conformity therewith. Therefore, the admission of Minniefield's prior altercations with Flinnon was inadmissible on this ground. *People v Catanzarite*, 211 Mich App 573, 579-580; 536 NW2d 570 (1995) (MRE 404(b) "applies to the admissibility of evidence of other acts of any person, such as a . . . victim . . . .").

As for the latter justification, we note that unlike the ban on improper character evidence, MRE 404(b) does permit the admission of prior bad acts in order to show motive. Defendant, however, fails to explain how evidence of Minniefield's prior violent acts with another witness would reveal a motive to fabricate an incriminating story against defendant. Instead, defendant offers only the conclusory statement that such extrinsic proof is constitutionally permissible.

Even if there were error, it was harmless beyond a reasonable doubt given that the jury was aware that Minniefield had acted in a violent manner with defendant's cousin just prior to the altercation with defendant. *People v Mass*, 464 Mich 615, 640 n 29; 628 NW2d 540 (2001) (a constitutional error is harmless if it is clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error). Additional evidence on this score, therefore, would have been needlessly cumulative, and as such, excludable under MRE 403.

Likewise, we reject defendant's final argument that the trial court erred in striking the portion of Joseph Landin's testimony in which he stated that during his earlier altercation with Minniefield, he overheard "everyone sa[y] [Minniefield was] getting a gun." Despite the fact that defendant appears to intimate a self-defense argument by claiming that such evidence would reveal that Minniefield was the aggressor in the fight with defendant, see *People v Harris*, 458 Mich 310, 320-321; 583 NW2d 680 (1998), the trial court excluded this evidence on hearsay grounds. Because defendant fails to lodge *any* challenge to the trial court's ruling in that respect, there is no basis for reversal. *People v Kevorkian*, 248 Mich App 373, 389; 639 NW2d 291 (2001). Moreover, since defendant has also failed to explain how the hearsay rules are arbitrary or disproportionate to the purposes they are designed to serve, he has abandoned his constitutional challenge to this specific ruling. *Id*. Nevertheless, we note that whether Minniefield withdrew from his fight with Joseph Landin to retrieve a firearm has absolutely no bearing on whether Minniefield was the initial aggressor in the later altercation with defendant. As such, we find defendant's argument on this point wholly without merit.

Finally, defendant argues he received the ineffective assistance of counsel when his trial counsel failed to properly challenge each of the trial court's evidentiary rulings that he has appealed. Since we have already determined that none of the challenged rulings was erroneous, any motion or objection would have been futile, and defendant has failed to establish that he was denied the effective assistance of counsel. *People v Goodin*, 257 Mich App 425, 433; 668

NW2d 392 (2003) ("Defense counsel is not required to make a meritless motion or a futile objection.").

Affirmed.

/s/ Douglas B. Shapiro
/s/ Kurtis T. Wilder
/s/ Christopher M. Murray